Supreme Court, U.S.
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No. 98-752

In The

Supreme Court of the United States

October Term, 1998

DEPARTMENT OF ENVIRONMENTAL PROTECTION
of the State of Florida,

Petitioner,

vs.

BOUCHARD TRANSPORTATION COMPANY, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Circuit Court Of Appeals For The Eleventh Circuit

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

CARL R. NELSON
Counsel of Record
FOWLER, WHITE, GILLEN, BOGGS, VILLAREAL & BANKER, P.A.
P.O. Box 1438
Tampa, FL 33601
(813) 228-7411
Counsel for Bouchard

TIMOTHY P. SHUSTA
HAYDEN & MILLIKEN, P.A.
615 DeLeon Street
Tampa, FL 33606
(813) 251-1770
Counsel for Tsacaba

NATHANIEL G. W. PIEPER
DAVID W. MCCREADIE
LAU, LANE, PIEPER, CONLEY & MCCREADIE, P.A.
P.O. Box 838
Tampa, FL 33601
(813) 229-2121
Counsel for Maritrans

Of Counsel
DAVID J. BEDERMAN
Gambrell Hall
Atlanta, GA 30322-2770
(404) 727-6822

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Whether the Eleventh Amendment allows a state to avoid a district court's resolution of rights to participate in a limitation fund held by the district court in an admiralty limitation of liability proceeding commenced by a vessel owner under Supplemental Rule F.

2. Whether a vessel owner may counterclaim against a state that files a claim against the vessel owner in the vessel owner's limitation of liability proceeding commenced under Supplemental Rule F.

INTERESTED PARTIES

Petitioner's list of parties is incomplete. A complete list of all parties to this litigation appears in the Petition for Writ of Certiorari filed in *Bouchard Transportation Company, Inc., et al., v. United States,* Case No. 98-682, at pp. ii-iii.

This brief is submitted on behalf of the Respondents:

BOUCHARD TRANSPORTATION COMPANY, INC.; TUG CAPTAIN FRED BOUCHARD INC.; and B. NO. 155 CORPORATION. These Respondents have no parent or subsidiary companies.

MARITRANS OPERATING PARTNERS L.P. and MARITRANS GENERAL PARTNER INC. The parent company of these Respondents is MARITRANS INC. There are no subsidiary companies.

TSACABA SHIPPING COMPANY, INC.; HIONG GUAN NAVEGACION CO., LTD.; and DOWA LINE AMERICA CO., LTD. The parent company of HIONG GUAN NAVEGACION CO., LTD. and DOWA LINE AMERICA CO., LTD. is DOWA LINE CO., LTD. There are no subsidiary companies.

COUNTER-STATEMENT OF THE CASE[1]

Petitioner's Statement of the Case is inaccurate and somewhat misleading in the following respects:

1. The owners of the tank barges carrying petroleum products, Respondents Bouchard and Maritrans, did not commence limitation proceedings under the 1851 Limitation Act. More correctly, the vessel owners commenced limitation proceedings in the district court under Supplement Rule F, seeking limitation of liability under the 1851 Limitation Act and under OPA 90 as the limitation provisions of each statute may apply to the claims asserted against the vessel owners.

2. The 60-day deadline for filing claims in the limitation cases applied only to those claimants that did not follow the claims presentation procedure of OPA 90 section 2713(a). *See* injunction and monition reproduced at Appendix 26, 34 to the Petition for Certiorari in Case No. 98-682. *See generally Boca Ciega Hotel, Inc. v. Bouchard Transp. Co., Inc.*, 51 F.3d 235 (11th Cir. 1995) (enforcing the claims presentation procedure). Had Petitioner here followed the claims presentation procedure, the 60-day deadline would not have applied to it.

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[1] A more complete and accurate statement of the case appears in the Petition for Writ of Certiorari filed in *Bouchard Transportation Company, Inc., et al., v. United States*, Case No. 98-682, at pp. 4-8. However, in Case No. 98-682, the Eleventh Amendment issue raised by Petitioner here was not raised. Therefore, the statements of the cases in both petitions should be read together.

3. Bouchard and Maritrans did not file "numerous" counterclaims. Each filed a single counterclaim containing numerous counts.

RESPONSE TO THE PETITION

Respondents submit this response to the petition in order to avoid being deemed to have agreed with Petitioner's framing of the issues and Statement of the Case.

Respondents do not object to the Court's granting the Petition for Writ of Certiorari without waiving their right to oppose Petitioner on the merits if the petition is granted.

The issues raised here are intertwined with the issues raised by the Petition in *Bouchard Transportation Company, Inc., et al. v. United States,* Case No. 98-682: whether the district courts should apply the *concursus* procedure of Supplemental Rule F or some other rule to be fashioned by the Court to give effect to the limitation of liability provisions of OPA 90 section 2704. Therefore, Respondents believe the Court should grant both petitions in

order to review and resolve all of the issues fairly and completely.

Respectfully submitted,

CARL R. NELSON
Counsel of Record
FOWLER, WHITE, GILLEN, BOGGS,
VILLAREAL & BANKER, P.A.
P.O. Box 1438
Tampa, FL 33601
(813) 228-7411
Counsel for Bouchard

TIMOTHY P. SHUSTA
HAYDEN & MILLIKEN, P.A.
615 DeLeon Street
Tampa, FL 33606
(813) 251-1770
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